

RICHARDS, LAYTON & FINGER

A PROFESSIONAL ASSOCIATION

ONE RODNEY SQUARE

920 NORTH KING STREET

WILMINGTON, DELAWARE 19801

(302) 651-7700

FAX (302) 651-7701

WWW.RLF.COM

C. MALCOLM COCHRAN, IV
DIRECTOR

DIRECT DIAL NUMBER
302-651-7506
COCHRAN@RLF.COM

March 11, 2005

VIA E-FILE AND HAND DELIVERY

The Honorable Sue L. Robinson
U.S. District Court for the District of Delaware
844 North King Street - Room 4209
Lock Box 18
Wilmington, DE 19801

Re: **Telelobe Communications Corporation, et al. v.
BCE, Inc., et al.; Civil Action No. 04-CV-1266**

Dear Chief Judge Robinson.

The purpose of this letter is to respond to the letter sent to Chambers by Ms. Morgan dated March 3, 2005. Although we are aware that the Court does not typically receive letter correspondence, at oral argument of defendants' motion to dismiss, the Court invited us to address, if helpful, certain recent decisions of the Third Circuit Court of Appeals

The problem illustrated by Ms. Morgan's letter is that the decisions referred to in that letter are entirely *unhelpful* to the task before the Court. First the cases discussed in Ms. Morgan's letter all arise in the summary judgment context. Of course, this case is before the Court on a motion to dismiss. Moreover, the cases do no more than generally reaffirm the "plain meaning" doctrine of contract interpretation, i.e., where words are used in a contract and are unambiguous, the Court is to afford the words their plain meaning and not rely on evidence extrinsic to the contract to interpret those words. Here, however, the Court is *not* being called upon to *interpret* a contract, but instead, in the context of this motion to dismiss, to determine whether the Complaint adequately alleges that a contract was formed. Thus, cases dealing with contract *interpretation*, while interesting, are of no help given what the Court is asked to rule on in the context of this motion.

We therefore respectfully submit that Ms. Morgan's letter does not address any issue before the Court on the current motion. We also represent to the Court that, after searching, we are not aware of any new Third Circuit precedent relating to issues currently before the Court, such as the extent to which the Court may look outside the "four corners" of the Complaint in deciding this motion to dismiss. Accordingly, we respectfully submit that the Court should

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proceed to decide the motion on the basis of the authorities previously briefed and argued. Of course, should we become aware of any Third Circuit authorities bearing on the issues presented in the briefs, we will bring them to the Court's attention promptly.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Cochran", with a stylized flourish at the end.

C. Malcolm Cochran, IV (#2377)

CMC:ps

cc: Clerk of the Court (via e-file and hand delivery)
Gregory V. Varallo, Esq.
Pauline K. Morgan, Esq (via hand delivery)
Kevin Gross, Esq. (via hand delivery)
Stuart Baskin, Esq. (via facsimile),
John P. Amato, Esq. (via facsimile)